

BEFORE NANCY KEENAN, SUPERINTENDENT OF PUBLIC INSTRUCTION

STATE OF MONTANA

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WHITEFISH SOFTBALL ASSOCIATION,	)	
	)	
Appellant,	)	
	)	
and	)	
	)	
STEVE R. HOWE	)	
	)	OSPI 281-99
Appellant,	)	
	)	<b>DECISION AND ORDER</b>
vs.	)	
	)	
BOARD OF TRUSTEES, SCHOOL	)	
DISTRICT NO. 44,	)	
	)	
Respondent.	)	
	)	

\* \* \* \* \*

On June 11, 1999, the Whitefish Softball Association (hereinafter "WSA") and Steven Howe appealed the June 1, 1999, Decision and Order of Donna Maddux, Flathead County Superintendent of Schools. The County Superintendent held that her office lacked jurisdiction because the appeal to her office was not filed within the 30 days allowed by statute and rule.

The Board of Trustees of Whitefish School District No. 44 (hereinafter "the Board" or "the Trustees") met on April 13, 1999. The minutes of the April 13, 1999, regular meeting are a matter of public record. Those minutes show that Whitefish Superintendent Dan Peters recommended hiring 4 people as girls' softball coaches. Mr. Howe was not recommended. During the Public Participation portion of the meeting, a number of individuals addressed the board in support of the District using Mr. Howe as a volunteer coach in the girls' softball program. The Board heard the public comment but exercised its discretion to accept the

Superintendent's recommendation. Minutes of the meeting state:

After discussion, the board agreed not to hear an appeal of the superintendent's decision not to recommend Steve Howe as a volunteer softball coach.

The WSA and Mr. Howe asked Mr. Peters to reconsider the decision and then appealed to the County Superintendent. The appeal was signed May 18, 1999, and received May 19, 1999. The County Superintendent, relying on § 20-3-107(3), MCA, and Administrative Rule (ARM) 10.6.103(2), decided that the appeal to her office was not filed within the 30 days allowed to appeal a decision of a school board to the County Superintendent.

The WSA and Mr. Howe appealed the County Superintendent's ruling to the State Superintendent. Having reviewed the County Superintendent's file and the Parties' briefs, the State Superintendent issues the following:

#### ORDER

The appeal to the County Superintendent was not filed within the time allowed by statute and administrative rule, therefore the County Superintendent lacked jurisdiction to hear the matter. The Order of the County Superintendent is AFFIRMED.

#### STANDARD OF REVIEW

The State Superintendent's review of a county superintendent's decision is based on the standard of review of administrative decisions established by the Montana Legislature in § 2-4-704, MCA, and adopted by this Superintendent in ARM 10.6.125. Findings of fact are reviewed under a clearly erroneous standard and conclusions of law are reviewed to determine if the correct standard of law was applied. See, for example, Harris v. Trustees, Cascade County School Districts No. 6 and F, and Nancy Keenan, 241 Mont. 274, 786 P.2d 1164 (1990) and Steer, Inc. v. Dept. of Revenue, 245 Mont. 470, at 474, 803 P.2d at 603 (1990).

## MEMORANDUM OPINION

Procedural History. The WSA is a fast pitch softball program in Whitefish for girls. In 1998, the WSA asked for and received sanctioning from the Whitefish School District as an extracurricular club. The school district policy on extracurricular clubs overseen by the district (School District policy 600.12) states in part:

The club will have its advisor(s)/coach(es) approved by the administration and accepted by the Board of Trustees prior to the onset of the club activity.

The WSA had asked Steve Howe, the parent of a student on the softball team, if he would coach the team during its summer program.

In January of 1999, the WSA asked Whitefish Superintendent Dave Peters to approve Mr. Howe as a volunteer coach in the District's program. The administration of the school district chose not to approve Mr. Howe. At its April 13, 1999, meeting the Board accepted the Superintendent's recommendations for softball coaches. On May 19, 1999, the County Superintendent received an appeal from Mr. Howe and the WSA.

Was the appeal to the County Superintendent filed within the time allowed by statute and rule? No.

Section 20-3-107(3), MCA, states:

(3) In order to establish a uniform method of hearing and determining matters of controversy arising under this title, the superintendent of public instruction shall prescribe and enforce rules of practice and regulations for the conduct of hearings and the determination of appeals by all school officials of the state.

Administrative rule (ARM) 10.6.103(2), states:

(2) A school controversy contested case shall be commenced by filing a notice of appeal with the county superintendent and the parties within 30 days after the final decision of the governing authority of the school district is made. (Emphasis added.)

ARM 10.6.103(2) establishes a 30 day statute of limitations on administrative appeals of

school board decisions. Statutes of limitation are jurisdictional to the tribunal hearing the matter.

After the time allowed for appealing a school board's act has passed, neither a county superintendent, this Superintendent, nor a Court has the jurisdiction to set aside the board's act.

MCI Telecommunications Corp. v. Montana Department of Public Service Regulation, 858 P.2d 364, 260 Mont. 175 (1993). Fuhrman v. Board of Trustees, Garfield County School District No.1, OSPI 224-93 (1994); Tuma v. Board of Trustees, Sanders County School District No. 6, OSPI 228-93 (1994); Scharler v. Whitehall School District Board of Trustees, OSPI 239-94 (1995). To extend the limitation period would extend county superintendents' jurisdiction over school boards beyond that established by ARM 10.6.103(2).

The minutes of the April 13, 1999, Board meeting state that "[a]fter discussion, the board agreed not to hear an appeal of the superintendent's decision not to recommend Steve Howe as a volunteer softball coach." This meeting was held April 13, 1999. The Board exercised its discretion in this matter and accepted the recommendation of its Superintendent regarding approval of volunteers. The time to appeal the Board's decision began on April 13, 1999, and it expired 30 days later. The appeal on May 18, 1999, was not timely.

The WSA maintains that they are appealing the May 3, 1999, decision of the Superintendent not to allow this matter to be placed on the agenda. Business may not be transacted by the trustees of a district unless it is transacted at a regular meeting or a properly called special meeting (20-3-322(4), MCA). Therefore, if there were an appealable issue in this case, it was the decision by the board at the regular meeting on April 13, 1999, not the action of the Superintendent on May 3, 1999.

It should also be noted that this Superintendent has consistently held that not every disagreement that occurs in a school setting gives rise to the right to a contested case hearing

before a county superintendent. County superintendents do not have a grant of general jurisdiction to hear and decide every dispute that may arise in a school setting. They do not have the power to set aside trustees' lawful exercise of discretion for example. See Hedges v. Lake County Transportation Committee, OSPI 219-93, 12 Ed.Law 170 (October, 1993).

#### CONCLUSION

The County Superintendent's decision that the appeal was not filed timely is  
AFFIRMED.

Dated this \_\_\_\_\_ day of December, 1999.

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NANCY KEENAN

## CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on this \_\_\_\_\_ day of December, 1999, a true and exact copy of the foregoing DECISION AND ORDER was mailed, postage prepaid, to the following:

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Barbara Barker, President  
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